

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSES TO EPIC’S OBJECTIONS
TO SPECIAL MASTER RULINGS ON
APPLE INC.’S PRODUCTIONS OF RE-
REVIEWED PRIVILEGED
DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Responses to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, produced to Epic in redacted form on April 21, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Emails Relating to Legal Advice: PRIV-APL-EG 00187140, PRIV-APL-EG 00187176, PRIV-APL-EG 00190120

PRIV-APL-EG_00187140 is an email from one non-lawyer to another non-lawyer—both of whom work in communications—attaching several documents. The redacted paragraph at the top of the email describes a document put together for a “litigation summit” in the prior year. Regardless of whether the document was drafted by or circulated among communications personnel, it was produced in connection with the provision of legal advice regarding ongoing litigation matters and a description of its contents is therefore privileged. *See FTC v. Boehringer Ingelheim Pharms., Inc.*, 180 F. Supp. 3d 1, 30 (D.D.C. 2016).

PRIV-APL-EG_00187176 is an email concerning a request for comment from a journalist regarding this litigation. The redacted content, sent from one non-lawyer to another non-lawyer, references a forthcoming request for legal advice. Because the redacted message contains information intended to be shared with counsel for legal advice, it is privileged. *See In re Meta Healthcare Litig.*, 2024 WL 3381029, at *2 (N.D. Cal. July 10, 2024).

PRIV-APL-EG_00190120 is an email chain, the unredacted portion of which contains an exchange between non-lawyers regarding preparations for press communications. The redacted portion consists entirely of two emails from Sean Cameron (in-house counsel). In those emails, Mr. Cameron provides an update solicited by the “litigation team” relevant to certain changes to the App Store guidelines in the United States. The redacted portion is thus prepared at the direction of counsel for the purpose of aiding the provision of legal advice, *see Boehringer Ingelheim Pharms., Inc.*, 180 F. Supp. 3d at 30, and is also itself legal advice from in-house counsel, *United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1076 (N.D. Cal. 2002). The redacted portion is privileged.

Messages Relating to Legal Advice: PRIV-APL-EG 00192065

PRIV-APL-EG_00192065 is a text message chain between two non-lawyers discussing the tax implications of various App Store changes and policies. The redacted message is a statement relaying express advice regarding tax treatment of certain App Store policies. The following (unredacted) message indicates that the advice was provided by counsel. A communication between two non-lawyers regarding legal advice received from an attorney in a separate communication is privileged and is therefore properly redacted. *See Dolby Lab 'ys Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019); *Chrimar Sys. Inc. v. Cisco Sys. Inc.*, 2016 WL 1595785, at *3 (N.D. Cal. Apr. 21, 2016).

DATED: April 29, 2025

WEIL, GOTSHAL & MANGES LLP
By: /s/ Mark A. Perry
Counsel for Defendant Apple Inc.